THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26166 of 2006

18.12.2006

Between:

A.P.Rangaiah, S/o.A.Ratnaiah

And others

… Petitioners

AND

M/s.M.A.Bari & B.Shyamasundar Rao, Advocates,

Receiver-cum-Commissioners in C.S.No.14 of 1958

Appointed by the Hon'ble High Court of A.P.,

H.No.11-3-627, Mosque Road, New Mallepally, Hydeabad

And others

… Respondents

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ORDER:

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The background of the case as may be culled out from the affidavit, in brief, is as follows. Dildarunnisa Begum filed civil suit before this Court being C.S.No.14 of 1958 for partition of large number of immovable properties, owned by Nawab Khurshid Jah (known as Khurshid Jah Paiga). Item 37 of the suit schedule is land admeasuring Acs.1210.00 comprised in survey No.78 of Hafeezpet village. It is the case of the petitioners that according to the findings of this Court on issues 7(a) and 14(1), the land in survey No.37 is not Paiga Property. A preliminary decree was passed by the High Court on 28.6.1963.

The Receiver-cum-Commissioner appointed in C.S.No.14 of 1958 (first respondent herein), filed Application No.107 of 1970 seeking leave of this Court to enter into compromise with occupants/tenants. The first respondent also filed Application Nos.19 and 114 of 1973 seeking direction to the Government to handover possession of the land in survey No.78 of Hafeezpet village. The applications were allowed directing the Government to deliver symbolic possession. By reason of the same, vendors of the petitioners and other third parties were allegedly in possession of the land.

The second respondent herein, namely, M/s.Sai Anupama Agencies Private Limited approached this Court by filing Application No.521 of 2006 in C.S.No.14 of 1958 for a final decree stating that they purchased the land in survey No.78 in 1995 from defendant 206 namely M/s.Cyrus Investments Limited (third respondent herein), who in turn had purchased the same from defendant 156, namely, late Nizam Mir Osman Ali Khan. It is stated that a representative of the third respondent entered into a compromise with the fourth respondent as a result of that respondents 3 and 4 jointly sold plotted area to third parties. Again in 1995, the fourth respondent assigned the rights in favour of second respondent for extent of Acs.107.00. They filed application seeking permission to fence the land and an Application No.504 of 2006 for injunction against Hafeezpet House Building Welfare Association. However, second respondent withdrew the application on 11.10.2006. While delivering the judgment, the High Court deleted item 37 from schedule IV of suit schedule property in C.S.No.14 of 1958 on the ground that the parties can claim partition only when the Government releases the land after enquiry under A.P. (Telangana Area) Abolition of Inams Act, 1955 (Inams Abolition Act). Though such enquiry was ordered vide Memo No.1278/JA. 3/86-27 Revenue Department, dated 23.6.1989, the Government did not conduct any enquiry. In the meanwhile, respondents claiming to be the assignees of decree holders in C.S.No.14 of 1958 erected fencing around part of the land in survey No.78, and threatened some of the petitioners with dispossession by use of force. Therefore, the petitioners filed the instant writ petition seeking a writ of Certiorari to call for the revenue records pertaining to the mutation of survey No.78 of Hafeezpet village in the name of respondents 2 to 13 and persons claiming under them and cancel the same and direct the respondents 14 to 16 to hold enquiry under the provisions of the Inams Abolition Act, as per the Government Memo dated 23.6.1989.

Learned Counsel for the petitioners submits that land in survey No.37 of Hafeezpet village does not form part of preliminary decree passed by this Court in C.S.No.14 of 1958. According to him unless an enquiry is conducted under the Inams Abolition Act by the competent authority and the land is released, the same cannot be partitioned. Therefore, he would urge that any assignment of the right under the preliminary decree by the defendants in favour of respondent 3 and others is a nullity and in the guise of decree, the petitioners cannot be dispossessed arbitrarily. Secondly he would urge that though the Government issued directions to the District Collector, Ranga Reddy District, to conduct enquiry under Inams Abolition Act a decade and half ago no such enquiry was taken up which itself is arbitrary. **Per contra**, learned Assistant Government Pleader for Revenue (General-T) for respondents 14 to 16 submits that petitioners purchased land which is not agricultural land, that the petitioners have allegedly constructed houses and, therefore, enquiry under the Inams Abolitions Act cannot be taken up. Secondly, he submits that the petitioners are challenging the assignment of the decrees by Decree Holders in C.S.No.14 of 1958 in favour of third respondent and others and, therefore, a writ petition is not maintainable. According to him they would have to agitate these issues either by filing a suit or by moving appropriate application

before this Court in C.S.No.14 of 1958.

A reading of the affidavit accompanying the writ petition especially paragraphs 7, 8, 11 and 13 would show that the petitioners mainly complained about the action of the first respondent (Receiver) in allegedly deviating from preliminary decree and supporting the application filed by the third respondent as assignee of the decree by defendants 156 and 206 in the said suit. The petitioners also criticize the orders passed by this Court in various applications in C.S.No.14 of 1958. Therefore, their right if any cannot be subject matter of a writ petition which is a collateral proceedings with reference to C.S.No.14 of 1958. If the plea of the petitioners is accepted even as a supporting argument, that defendants 156 and 206 could not have assigned their right to partition in respect of various lands including the land in survey No.37, it would amount to reviewing the order of this Court passed in exercise of original civil jurisdiction in C.S.No.14 of 958. Such a course of action is impermissible in writ jurisdiction. Therefore, this writ petition is wholly misconceived. The petitioners have to seek redressal elsewhere.

In the Memorandum dated 23.6.1989 considering the request of the District Collector, Ranga Reddy District, having regard to the judgment and decree dated 28.6.1963 in C.S.No.14 of 1958 that the tenure of Hafeezpet village has to be decided under the Inams Abolition Act, the Government advised necessary action under Section 10 of the Inams Abolition Act so as to decide the tenure of Hafeezpet village. Whether such advice by the Government to the District Collector confers any right on the petitioners to seek enquiry under the Inams Abolition Act? This Court is afraid insofar as the petitioners are concerned, they have no such right.

Admittedly the petitioners purchased plots in Venkata Ramana Colony called Gokul Layout situated in the land admeasuring Acs.215.00 in survey No.78 of Hafeezpet village. During 1986-1990, G.Ramaswamy and others sold house plots to various individuals under agreements of sale and delivered possession. The layout was provided with all infrastructural facilities by Andhra Pradesh State Electricity Board and Department of Telecommunications. All the purchasers constructed houses. At present Venkata Ramana Colony is having 1000 semi permanent houses and 500 pakka houses. All this is admitted. In such a situation whether enquiry under Inams Abolition Act can be taken up? The Inams Abolition Act in pith and substance regulates agricultural inam land. A reference to Section 2(c) read with 2(f), Sections 4 to 8, would show this. Section 10 empowers the Collector/Deputy Collector to enquire into the nature and history of the land and register any of the categories of persons as recognized by the Act, as occupants of the land. Section 9 deals with certain buildings and inam lands used for non-agricultural purposes. If the inam lands used for non-agricultural purposes, the enquiry under Section 10 is not contemplated. Therefore, if at this point of time when admittedly colony has come up over an extent of Acs.215.00 in survey No.78, any direction for enquiry would be contrary to the statute. Therefore, such a direction cannot be granted. The Government issued the memo way back in June 1989 and the Government should reconsider the same now having regard to the conversion of agricultural land into non-agricultural land. The petitioners may have to approach the Government for such purpose.

The prayer for writ of Certiorari to quash the mutation granted by Revenue Authorities in favour of respondents 2 to 13 cannot be granted. Under A.P. (Telangana Area) Land Revenue Act 1317F, a person aggrieved by an order/action of a Revenue Authority can file appeal under Section 158 thereof before higher Revenue Authority. The granting and non-granting mutation or cancellation of

mutation is certainly a matter which falls within the ambit of this provision. The petitioners may therefore have to avail such remedy if so advised. They may also have to avail the remedy of filing the applications before the Court in C.S.No.14 of 1958, if such applications are permissible at this point of time. In this writ petition, no relief can be granted to the petitioners.

The writ petition is misconceived and is accordingly dismissed.

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(**V.V.S.RAO,J**)

December 18,2006.

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